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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Advanced Television Systems and
Their Impact Upon the Existing
Television Broadcast Service

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MM Docket No. 87-268

**COMMENTS OF THE ELECTRONIC INDUSTRIES ASSOCIATION
AND THE ADVANCED TELEVISION COMMITTEE**

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EXECUTIVE SUMMARY

Although the technological changes identified by the *Notice* are by no means insignificant, they do not warrant a major shift in the Commission's ATV policies. The Commission's decisions in this proceeding should continue to be guided by two overriding principles. First, the Commission's overarching goal should be to promote the ubiquitous availability of HDTV, so that all Americans can enjoy the promised benefits of ATV. Second, once the Commission establishes the necessary regulatory groundwork, it should rely on consumer choice and marketplace forces to the maximum extent feasible to guide the transition to this exciting new technology.

Consistent with these principles, EIA and the ATV Committee urge the Commission to conclude as follows:

- HDTV should remain the centerpiece of ATV. HDTV programming is needed to provide consumers with the incentive to transition from today's familiar NTSC service to tomorrow's ATV.
- Licensees should be required to broadcast a reasonable minimum amount of HDTV programming on their ATV channels. Such an obligation can be imposed without unduly burdening broadcasters or restricting their operating flexibility.
- Cable television will be key to the success of ATV. The Commission should confirm that the must-carry obligations of cable operators extend to both ATV and NTSC broadcasting. The Commission should also require cable operators to support the ATV standard adopted for over-the-air broadcasting.
- The Commission should not prescribe technical standards for television receivers. The marketplace can be safely relied upon to provide consumers with a rich variety of affordable television receivers capable of receiving multiple combinations of NTSC, SDTV and HDTV, as well as digital converters capable of supporting all present and future NTSC receivers. The

marketplace can also be relied upon to inform consumers of their equipment options.

- Broadcasters should not be permitted to restrict competition in the consumer electronics marketplace through collective action.
- Initial eligibility to obtain ATV channels should be limited to existing broadcasters and they should be given the opportunity to do so without cost. If broadcasters use their spectrum for other than free, over-the-air TV programming, these broadcasters should be assessed spectrum fees (to the extent the Commission has the authority to do so).
- Broadcasters should be subject to date-certain ATV application and construction deadlines, giving due regard to the special circumstances of non-commercial broadcasters and broadcasters operating in small markets.
- The Commission should not decide now when to terminate NTSC broadcasting. The Commission, however, can productively address the kinds of factors that should be considered at a later point in the transition to ATV, including the number of households that remain exclusively dependent on terrestrial NTSC broadcasting, the availability of low-cost digital converters, and the amount of ATV programming available.
- The Commission should promptly recover as much contiguous television spectrum as possible. Towards this end, the Commission should make clear that NTSC spectrum is on "loan" to broadcasters pending the transition to ATV. The Commission should also consider economic incentives, as well as regulatory mechanisms, to speed the recovery and reallocation of this spectrum for new and innovative services.

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AND THE ADVANCED TELEVISION COMMITTEE**

The Electronic Industries Association ("EIA") and the EIA Advanced Television Committee ("Committee") hereby submit the following comments in response to the Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry ("*Notice*") which the Commission issued in the above-captioned proceeding on August 9, 1995.¹ In the *Notice*, the Commission has inquired whether recent technological developments in advanced television ("ATV") require changes in the policy decisions that were made in earlier phases of this proceeding.²

As set forth more fully below, and notwithstanding the significance of the technological developments identified by the *Notice*, the Commission's decisions in this proceeding should continue to be guided by two principles. First, the Commission's policies should promote the ubiquitous availability of High Definition Television ("HDTV"), so that all

¹ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry, MM Docket No. 87-268, FCC 95-315 (released Aug. 9, 1995) [hereinafter "*Notice*"].

² See *id.* ¶ 19.

Americans can enjoy the promised benefits of ATV. Second, once the Commission establishes the necessary regulatory groundwork, it should rely on consumer choice and marketplace forces to the maximum extent feasible to dictate the pace at which Americans transition to this exciting new technology.

I. INTRODUCTION

A. Identification And Interest Of EIA And The ATV Committee

EIA is the principal trade association of U.S. electronics manufacturers. The ATV Committee is a committee formed under the auspices of EIA. Although sponsored by EIA, the Committee is not limited to EIA members. Rather, it is composed of a diverse array of organizations, including developers, manufacturers, sellers, and installers of equipment used in the broadcast, cable television, satellite, telecommunications, and consumer electronics industries, as well as providers of video delivery services. A list of the Committee's members is attached to these comments.

One of the Committee's principal goals is to promote dialogue and develop consensus on the many technical and policy questions presented by the introduction of ATV. In this regard, the Committee is committed to ensuring that the transition from today's NTSC environment to tomorrow's world of ATV is as seamless and inexpensive as possible for consumers. Towards this end, the Committee has actively participated in each phase of this rulemaking proceeding.

The comments which follow reflect the consensus views of the Committee's member companies. Individual members, however, may hold different views on a number of

the other issues raised by the *Notice*, and EIA and the Committee fully expect that these members will file their own individual comments.

B. Summary Of Position

In their prior comments in this proceeding, EIA and the Committee have stressed the need for the Commission to act prudently, but expeditiously, to move ATV from the drawing board to reality. Notwithstanding the fact that eight years have elapsed since the Commission initiated this proceeding, the Commission is to be commended for ensuring that the complex issues associated with the implementation of ATV have been fully explored in an orderly and logical sequence. In its most recent *Notice*, the Commission has asked whether technological developments warrant reexamining a number of its past conclusions. Although these developments are by no means insignificant, they do not warrant a major shift in policy. EIA and the Committee therefore urge the Commission to stay the course so that the American public can enjoy the benefits of ATV as soon as possible.

In particular, EIA and the Committee urge the Commission to: maintain HDTV as the centerpiece of ATV; require broadcasters to transmit a minimum, but ever-increasing amount of HDTV programming; afford broadcasters maximum flexibility once they have satisfied their HDTV programming obligations; confirm that the must-carry obligations of cable operators extend to both ATV and NTSC signals; give equipment manufacturers maximum flexibility in meeting consumer demand for ATV and ATV-NTSC hybrid products; prevent broadcasters from restricting competition in the consumer electronics market through collective action; limit initial eligibility to obtain ATV channels to existing broadcasters; impose date-certain application and construction deadlines on ATV licenses; allow ATV to gain consumer

acceptance at its own pace, without an artificial deadline for the termination of NTSC service; and recover as much contiguous television spectrum as promptly as possible.

II. HDTV SHOULD REMAIN THE CENTERPIECE OF ATV

When the Commission initiated this proceeding in 1987, it noted the physical limitations of NTSC service and the possibility of greatly enhancing the visual and audio quality of television through new technologies.³ As the Commission is well aware, industry has been assiduously working towards that goal. Once implemented, HDTV will create a new, more vibrant and engaging experience for all television viewers. It promises to bring the high quality, pictorial acuteness of the theater to every American home.

During the process of creating an HDTV standard, it has become apparent to all concerned that digital technology will allow broadcasters to multicast several digital Standard Definition Television ("SDTV") signals, as well as a variety of non-video services, within the existing 6 MHz television allocation. The *Notice* inquires whether broadcasters should be required, in light of this development, to provide a minimum amount of HDTV programming or whether they should have the flexibility to offer whatever mix of programming they deem appropriate.⁴

EIA and the Committee submit that there can be but one answer to this question. If ATV is to become the Nation's broadcast television standard for the 21st century, HDTV must

³ See *id.* ¶¶ 3, 12 (citing *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, Notice of Inquiry, 2 FCC Rcd 5125, 5127 (1987)).

⁴ See *Notice* ¶ 23.

be its centerpiece. HDTV will give consumers the greatest incentive to transition from familiar NTSC service to ATV. HDTV programming, after all, will be the principal qualitative difference between today's analog service and tomorrow's digital world. Only HDTV will provide the level of picture detail required for true large screen presentation. In this regard, HDTV programming will respond to the growing consumer demand for home theater-quality video and CD-quality sound. Without a reasonable amount of daily HDTV programming, ATV could be stillborn, notwithstanding its multichannel capacity and its ability to provide consumers with ancillary services.

EIA and the Committee therefore urge the Commission to require ATV licensees to broadcast a reasonable minimum amount of free, over-the-air HDTV programming on their ATV channels.⁵ At least some of this HDTV programming should be broadcast in prime time and should include "showcase" programming, such as special feature presentations and high visibility sporting events.⁶ Although EIA and the Committee are not insensitive to the costs of producing and transmitting HDTV programming, the availability of meaningful quantities of HDTV programming will be the single most important contributing factor to the success of ATV, as measured by consumer acceptance of ATV and sales of ATV receivers. In the absence of HDTV programming, consumers simply will not purchase ATV receivers.

⁵ Only transmissions coded in 720 or 1080 format (or, when available, a higher quality format) should be considered HDTV programming. EIA and the Committee believe that the degree of pictorial acuteness which these two formats offer are the minimum necessary to attract viewers to HDTV.

⁶ See Notice ¶ 24.

EIA and the Committee recognize that some broadcasters may argue that no purpose would be served by transmitting HDTV programming until there is a large installed base of ATV receivers.⁷ Yet, the industry's experience with color television demonstrates that programming will drive the deployment of ATV. In the nine years following the introduction of color broadcasting, the amount of color programming was quite limited. This limited availability of color programming resulted in very low sales of color television receivers. When broadcasters quadrupled the hours of color programming -- from less than 3,000 in 1964 to over 12,000 in 1968 -- the number of homes with color receivers soared -- from two million to 15 million households.

In the past, the Committee has argued that one way of ensuring an expeditious transition to ATV, in addition to requiring prime time HDTV programming, is to require that an increasing percentage of all programming on the ATV channel be devoted to true HDTV

⁷ The Association for Maximum Service Television, Inc. ("MSTV"), by contrast, has recognized the importance of HDTV programming. On September 15, 1995, the MSTV Board of Directors adopted a resolution which states, in relevant part:

The MSTV Board reaffirms its goal and commitment to broadcast high-definition television. The Board also reaffirms its goal and commitment to the use by broadcasters of their ATV channels substantially for HDTV. As part of the commitment to HDTV, broadcasters commit to broadcasting a reasonable minimum of high-definition television as determined by FCC rules.

See also Resolution Adopted by Board of Directors of Association for Maximum Service Television, Inc. (Apr. 9, 1995).

programming.⁸ EIA and the Committee, however, would be the first to concede that there are other ways of articulating the HDTV programming obligations of ATV licensees. Although the precise formula or measure chosen by the Commission is important, it is not nearly as significant as the requirement that broadcasters be obligated to use their ATV channels for a substantial and ever-increasing amount of HDTV programming.

A minimum HDTV programming requirement need not be administratively burdensome for broadcasters. Limited record keeping requirements can be relied upon to ensure that ATV licensees satisfy their HDTV programming obligations. Broadcasters need only be required to maintain an accurate log of their HDTV programming and to submit that log, in computer readable form, to the Commission on an annual basis. Given the value of ATV spectrum and the public's likely interest in HDTV programming once it becomes available, the Commission will quickly learn whether individual broadcasters have failed to satisfy their HDTV programming responsibilities. In such cases, the Commission can rely on its traditional regulatory tools to deal with meritorious claims.

An HDTV programming requirement also need not unduly restrict a broadcaster's operations. Indeed, EIA and the Committee believe that the rules governing ATV service should be as flexible and unintrusive as possible. One of the principal advantages of digital technology is the flexibility it creates to offer a variety of video and non-video services. Once they have satisfied their HDTV programming obligations, broadcasters should be free to offer the mix of

⁸ More specifically, the Committee envisioned a transition period during which a broadcaster's HDTV programming obligation would start at 30 percent of all programming hours and end at 80 percent of all programming hours. *See* Comments of EIA/ATV Committee, MM Docket No. 87-268, at 11 (July 16, 1992).

video and ancillary services they deem appropriate. This flexibility will enable broadcasters to compete more effectively with other multiservice providers, such as cable television and direct broadcast satellite operators. Moreover, if these ancillary services are offered on a subscription basis, they will provide broadcasters with additional revenue to offset the cost of the transition to ATV.⁹

The Commission should similarly take a flexible approach with respect to the simulcasting of ATV and NTSC programming. Once broadcasters have satisfied their HDTV programming obligations, they will have an economic incentive to ensure that their most popular programming reaches the widest possible audience at the lowest possible cost. This may entail the simulcasting of such programming. What is most important during the early years of the transition to ATV is that broadcasters use their creativity to develop the kinds of programming for ATV channels that will stimulate consumer interest in, and foster the development of, a market for ATV. The broadcasting of unique programming on ATV channels may be necessary to create that stimulus. If unreasonable disparities develop between ATV and NTSC programming and broadcasters no longer appear to be serving the public, the Commission can take appropriate action at that time.

III. THE MUST-CARRY OBLIGATIONS OF CABLE OPERATORS SHOULD EXTEND TO BOTH ATV AND NTSC SIGNALS

In addressing the issues raised by the *Notice*, the Commission should recognize that the success of ATV will require substantial participation by the cable industry. As the

⁹ The Commission, however, should consider spectrum fees for such subscription services. See *infra* § V.

Commission is well aware, a majority of American homes now receive television programming over cable systems. As a consequence, any delay by the cable industry in implementing ATV will necessarily retard the acceptance of ATV by the American public. The Commission should therefore confirm that the cable operators' must-carry obligations extend to both ATV and NTSC broadcasting. More specifically, the Commission should ensure that cable subscribers are able to receive SDTV and HDTV programming as initially broadcast. At the same time, the Commission should ensure that those who remain dependent on NTSC receivers, as well as associated video cassette recorders ("VCRs") and other peripherals, can continue to receive NTSC programming over their cable systems.

Although the simultaneous transmission of NTSC and HDTV programming could result in the retransmission of substantially more broadcast programming than takes place today,¹⁰ such a requirement will serve the public interest. Among other things, such retransmission will demonstrate to NTSC viewers the increasing availability of HDTV programming, without depriving them of NTSC programming. More important, simultaneous transmission will afford consumers the opportunity to experience the qualitative differences between the two formats. Family, friends, and neighbors of "early adopters" will see the tremendous improvements of HDTV over NTSC, and many of them will be moved to acquire ATV equipment, thereby accelerating the transition to ATV. The carriage of multiple SDTV signals on cable systems will also promote ATV deployment. To the extent broadcasters can

¹⁰ See Notice ¶ 82.

deliver more appealing programming over more channels, consumers will have an incentive to tap into that programming by transitioning to ATV receivers.

The must-carry obligations of cable operators with respect to HDTV programming have clearly been addressed by Congress. Section 614(b)(4)(B) of the Communications Act directs the Commission to "ensure cable carriage of such broadcast signals."¹¹ Indeed, a cable operator's failure to retransmit an HDTV broadcast signal in that format would result in a "material degradation" of that signal in contravention of the Act.¹²

The requirement that cable operators retransmit HDTV programming does not relieve them of their NTSC obligations. Section 614(b)(3)(A) of the Act requires carriage of "the primary video, accompanying audio, and line 21 closed caption transmission" of each local broadcast station carried on a cable system.¹³ As the context of the statute makes clear, "primary video" is the video stream or visual event the broadcaster intends its viewers to see.¹⁴ Thus, to the extent that a broadcaster transmits two distinct formats, both are primary video streams. The exception to the must-carry rule -- when one local station's signal is substantially duplicated by another's -- does not alter this assessment.¹⁵ The extent to which broadcasters will transmit the same programs in ATV and NTSC formats is currently unknown and

¹¹ 47 U.S.C. § 534(b)(4)(B).

¹² *See id.* § 534(b)(4)(A) ("The signals . . . shall be carried without material degradation.").

¹³ *Id.* § 534(b)(3)(A).

¹⁴ "Primary video" stands in contrast to "nonprogram-related material" and certain material in the vertical blanking interval. *Id.* § 534(b)(3)(A).

¹⁵ *See id.* § 534(b)(5).

unknowable. Moreover, since ATV will represent a new, more vibrant viewing experience for America's television audiences, ATV transmissions will be qualitatively different from NTSC transmissions and thus inherently non-duplicative.¹⁶

EIA and the Committee are not unaware that the cable operators' existing channel line-up will be impacted by this broadening of their must-carry obligations. As the Commission is aware, however, the must-carry/retransmission consent obligations of cable operators are circumscribed by statute.¹⁷ Cable systems with different channel capacities have different obligations, and the obligation of each is capped at a point appropriate to its size.

In addition to cable's must-carry obligations, the *Notice* raises a number of questions regarding the ability of cable systems to deliver ATV signals.¹⁸ EIA and the Committee hope that, as digital cable systems become a reality, cable operators will support the ATV standard ultimately adopted by the Commission for over-the-air broadcasting. Widespread acceptance of a single standard will facilitate the deployment of ATV by minimizing the equipment that consumers will have to lease or buy to enjoy ATV programming. Multiple incompatible or partially compatible standards, by contrast, will dampen consumer enthusiasm for ATV by forcing them to cope with the complexity, confusion and expense of choosing the correct mix of service and equipment.

¹⁶ As noted above, ATV will only succeed if it offers a substantively different viewing experience and a vastly different array of viewing capabilities. In this regard, the fact that ATV and NTSC cannot be broadcast using the same equipment or received using the same television (unless especially designed to receive both signals) is further evidence that the two formats are not substantially duplicative.

¹⁷ See 47 U.S.C. § 534(b)(1).

¹⁸ See *Notice* ¶ 84.

Resolving incompatibility problems through cable converter boxes is no solution at all. (These converter boxes, which make incompatible ATV systems compatible, are to be distinguished from digital converter devices which will enable consumers with NTSC televisions to receive ATV signals.) Given the Commission's authority to prescribe transmission standards, such converter boxes should be unnecessary. Moreover, converter boxes will needlessly add to the expense of subscribing to ATV¹⁹ and, if they resemble today's set-top boxes, they may impede the use of VCRs and the features and functions of television receivers, such as picture-in-picture, to the detriment of the viewing public.

EIA and the Committee hope that broadcasters, cable operators and equipment manufacturers can address the compatibility issues presented by cable systems through voluntary industry standards. Two issues, however, require prompt attention. The first, identified by the *Notice*, is the need to establish a digital line 21 equivalent.²⁰ The second, and far more significant, is the need to refine and define more precisely the QAM technology expected to be used by digital cable systems.²¹ Although consumer electronics manufacturers can readily -- and economically -- manufacture television receivers capable of receiving both QAM and VSB (which will be used by over-the-air ATV) signals,²² they can only do so if QAM is as well

¹⁹ If there are multiple standards, manufacturers will need to produce multiple varieties of converter boxes. As a consequence, they will not be able to achieve, and pass along to consumers, the savings made possible by economies of scale.

²⁰ *Notice* ¶ 83.

²¹ "QAM" is the acronym for Quadrature Amplitude Modulation.

²² "VSB" is the acronym for Vestigial Side Band.

defined as VSB. At present, there is no single agreed-upon specification for QAM. This must be remedied if consumers are to benefit from the availability of robust ATV receivers.

IV. THE COMMISSION SHOULD NOT PRESCRIBE TECHNICAL REQUIREMENTS FOR ATV RECEIVERS

Of all the imponderables in this proceeding, perhaps the greatest is the reaction of the American public to ATV. Ninety-eight percent of American households own at least one NTSC television receiver; 87 percent own NTSC-compatible VCRs; and substantial numbers own camcorders and universal remote controls designed to work with their existing NTSC television equipment.²³ In fact, NTSC television receivers have the highest penetration rate of all consumer electronics products.²⁴ Given this large installed base of NTSC equipment and peripherals, the Commission would be well advised to allow marketplace forces, rather than government fiat, to guide the American public's transition to ATV.

In this regard, the Commission should resist the temptation to adopt rules that prescribe the capabilities of ATV receivers. In the past, the Commission correctly recognized the difficulty of projecting consumer wants and needs, and therefore declined to mandate the manufacture of dual-mode (ATV and NTSC) receivers.²⁵ The Commission, at that time, expressed concern that (1) it lacked sufficient information about the costs of dual-mode

²³ EIA Market Research Department (June 1995 figures).

²⁴ *Id.* Only radio receivers have a similar penetration rate. Television penetration even surpasses telephone penetration by two percent. *Id.*

²⁵ *See Notice* ¶ 77 (citing *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order, Third Report and Order, Third Further Notice of Proposed Rule Making, 7 FCC Rcd 6924, 6984 (1992) [hereinafter "*Third Report and Order*"]).

receivers, and (2) that, without such information, it feared imposing unnecessary costs on consumers.²⁶

In the *Notice*, the Commission has inquired whether changed circumstances warrant revisiting these conclusions. Citing its authority under the All-Channel Receiver Act to require television receivers to "be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting,"²⁷ the Commission also asks whether it should require all-format receivers, limit the sale of single-format (*e.g.*, NTSC) receivers, or require NTSC equipment made after a certain date to be capable of accommodating a digital converter.²⁸

Although EIA and the Committee share the Commission's concern that consumers not purchase television receivers that will be eclipsed by the transition to ATV, a properly functioning competitive marketplace is far superior to government regulation in anticipating and addressing consumer needs. Consumer electronics manufacturers stand ready to produce television sets capable of receiving multiple combinations of NTSC, SDTV and HDTV programming. Indeed, the success of consumer electronics manufacturers in this highly competitive industry is dependent on providing consumers with the products they want at affordable prices. Thus, manufacturers can be expected to target a broad spectrum of consumer interests, ranging from "early adopters" willing to pay a premium to obtain new products to those whose only desire is to display rented home videos and watch an occasional news program.

²⁶ See *Third Report and Order*, 7 FCC Rcd at 6984.

²⁷ 47 U.S.C. § 303(s).

²⁸ *Notice* ¶¶ 77-78.

Manufacturers can also be expected to enhance their products with features and functions that consumers are likely to find attractive.²⁹ As is true today, the market can safely be relied upon to respond to the tastes and pocketbooks of American consumers.

During this transition, EIA and the Committee fully anticipate that ATV receivers will incorporate an NTSC reception capability.³⁰ This will be especially true during the earlier stages of the transition, when NTSC remains the predominant medium for program origination and for program reception and display. ATV receivers are also likely to support both SDTV and HDTV reception. Digital televisions are also likely to emerge that are capable of receiving ATV signals, but that display them as lower resolution SDTV pictures rather than in true HDTV fashion. These televisions will find a marketplace niche between inexpensive NTSC receivers and higher-priced HDTV-quality ATV receivers. In short, the transition to ATV will be characterized by a marketplace in which consumers can choose from a wide variety of television receivers at an equally wide variety of prices.

The marketplace will also ensure that consumers know their equipment options. Informational programs and consumer education are critical components of the manufacturer-consumer relationship. The consumer electronics industry long ago learned the best way to maintain enthusiasm for a new product is to ensure that it meets consumer expectations.

²⁹ For example, 49 percent of U.S. households have television receivers with stereo capability, even though there is no regulatory requirement for such a feature. EIA Market Research Department (June 1995 figures).

³⁰ To require an ATV reception capability in an NTSC receiver would be senseless. There is no reason whatsoever for such a requirement. Moreover, such a requirement would substantially increase the price of NTSC receivers, especially in relation to the low cost of these products.

Manufacturers will therefore be certain to educate consumers regarding their equipment options during the transition to ATV.

Government intervention into receiver design is therefore unnecessary. It is also unwarranted. Plainly, the Commission should not compel consumers to purchase ATV capabilities that they do not want or -- more important -- that they cannot afford. Nor should the Commission deny consumers the opportunity to purchase lower-priced equipment that meets their viewing needs. In particular, the Commission should not prohibit or restrict the sale of NTSC receivers. An enormous embedded base of video cassette recorders, laser disc players, and other video equipment use NTSC receivers for non-broadcast purposes. To deny consumers continued access to this technology could immeasurably harm those who can least afford to convert, at an early stage, to digital television. In this regard, the Commission should be aware that digital converters will be useable in connection with any *present* or *future* NTSC receivers. As a consequence, all consumers should have a readily available and economical means of accessing digital service.³¹

The Commission should also reject the suggestion that it dictate how ATV signals should be displayed, *i.e.*, in true HDTV fashion or as a lower resolution SDTV picture.³² Again, the Commission's goal should be to maximize consumer choice by affording manufacturers wide latitude in their design choices. If television receivers can be produced less

³¹ Indeed, the use of such decoders may prove to be the vehicle of choice for many consumers, given the extended useful life of most television receivers.

³² See Notice ¶ 78.

expensively using less expensive or sophisticated technology, consumers should be able to buy them, particularly if these receivers meet their needs.

Moreover, the Commission lacks the authority under the All-Channel Receiver Act ("ACRA") to require ATV signals to be displayed in a particular format. The U.S. Court of Appeals for the District of Columbia Circuit has previously determined that the Commission's authority under ACRA is limited to ensuring "*adequate or effective*" reception of all channels; the statute does *not* authorize the Commission to establish minimum performance standards.³³ Any specification that ATV receivers be required to receive HDTV as HDTV would contravene the letter and intent of the statute.³⁴ The Commission therefore should, as it has traditionally done, continue to rely on the marketplace to influence receiver design and satisfy consumer demand.

A related equipment issue raised by the *Notice* is whether broadcasters should be encouraged or directed to assist consumers in leasing or acquiring ATV receivers.³⁵ EIA and the Committee strongly believe that this is an area into which the Commission should not delve.

³³ *Electronic Industries Association Consumer Electronics Group v. FCC*, 636 F.2d 689, 696 (D.C. Cir. 1980) (noting that Congress declined to adopt language that would have allowed the Commission to prescribe minimum performance standards) (emphasis in original).

³⁴ The Commission also should not require the use of visible warning labels for NTSC receivers. *See Notice* ¶ 78. To begin with, as explained below, it would be imprudent to establish a date-certain for the termination of NTSC service. *See infra* § VI. Indeed, to require a warning label at this time would create more confusion than clarity. Second, and equally important, the Commission can rely on the marketplace to advise consumers of the benefits of ATV receivers and the limitations of NTSC-only products.

³⁵ *See Notice* ¶ 54.

To invite collective action by broadcasters in the consumer electronics marketplace could restrict the healthy competition which now exists. If broadcasters were allowed to choose equipment for consumers, their selection might be driven by their own economic self-interest rather than by the best interests of consumers. The public clearly would not benefit from such an environment. Moreover, to the extent such collective broadcaster involvement in the acquisition, sale or lease of equipment would involve subsidies, it would disserve the public interest. Given the Commission's efforts to eliminate or minimize subsidies in other fields subject to its jurisdiction, it simply makes no economic sense to institutionalize or sanction such subsidies where an otherwise competitive consumer electronics marketplace exists.

Collective broadcaster involvement in the acquisition, sale or lease of consumer electronics equipment would also raise the prospect of bundling. Plainly, the bundling of equipment and service is contrary to the public interest. The unbundled availability of consumer electronics equipment, separate and apart from broadcast services, is one of the principal reasons the United States has such an extraordinarily competitive equipment market. This competition is responsible for the cornucopia of equipment from which consumers are able to choose. By contrast, the one U.S. video service market in which service and equipment are bundled has historically been characterized by high prices and limited consumer choice.³⁶ The Commission should therefore be reluctant to promote concerted broadcaster action. Rather, it should continue

³⁶ Moreover, the bundled set-top boxes required by cable television systems have historically had the added disadvantage of interfering with the features and functions of competitively supplied equipment. *See Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatibility Between Cable Systems and Consumer Electronics Products*, First Report and Order, 9 FCC Rcd 1981 (1994).

to rely on the intensely competitive consumer electronics marketplace to satisfy the needs of consumers during the transition to ATV.

V. INITIAL ELIGIBILITY TO OBTAIN ATV CHANNELS SHOULD BE LIMITED TO EXISTING BROADCASTERS, SUBJECT TO CERTAIN CONDITIONS

EIA and the Committee continue to support the allocation of 6 MHz for each ATV channel.³⁷ Six MHz is the minimum spectrum required for HDTV today and will provide a high technological ceiling for future enhancements. EIA and the Committee also continue to support the allocation of ATV channels to existing broadcasters without cost, but subject to the conditions set forth below.³⁸

If there is one ATV-related issue as to which all agree, it is that the transition to ATV -- while uncertain in its course -- should protect and promote the continued availability of free, over-the-air broadcasting. Because 98 percent of American households have at least one television, and many have two or more,³⁹ the role which free, over-the-air television has played -- and should continue to play -- in our society is difficult to overstate. By limiting initial eligibility for ATV licenses to existing broadcasters, the Commission will ensure that free television thrives during the transition to the new ATV environment. It will also preserve competition in local video service markets.

³⁷ See Notice ¶ 21.

³⁸ See *id.* ¶¶ 27, 31.

³⁹ EIA Market Research Department (June 1995 figures).

The Commission certainly should not consider auctioning this spectrum.⁴⁰ As a legal matter, the Commission can only auction ATV spectrum if it finds that the spectrum will principally be used to provide subscription video services.⁴¹ Such a conclusion, however, would be at odds with the Commission's commitment to, and would signal the death knell of, free over-the-air broadcasting. The Commission should also recognize that in the transition to ATV, broadcasters will make strategic investments in new studios, transmission facilities, and programming. Adding the cost of a successful auction bid to this list of investments would jeopardize the ability of many broadcasters to make such a transition. At a minimum, it would strain their ability to introduce this new technology promptly and develop HDTV programming.

None of this is to say that broadcasters should be given *carte blanche* to use their ATV spectrum as they see fit. If broadcasters use their ATV spectrum for services other than free, over-the-air television programming, *i.e.*, if they use it to provide revenue-producing ancillary data services or subscription video services, the Commission should assess these broadcasters spectrum fees (to the extent it has the authority to do so). There is no public policy reason why broadcasters should be permitted to use valuable spectrum, without charge, to provide subscription services, particularly when licensees providing similar competing services are now required to pay for their spectrum.

The Commission should also make clear its willingness and intent to reassign ATV spectrum if a broadcaster is either uninterested or unable to make the transition to ATV,

⁴⁰ See Notice ¶ 31.

⁴¹ See 47 U.S.C. § 309(j).

or if it fails to satisfy its HDTV programming obligations. In this regard, EIA and the Committee support the use of date-certain application and construction deadlines. Such deadlines are necessary to ensure continued progress towards the widespread availability of terrestrial ATV broadcasting. Simply stated, broadcasters should not be permitted to tarry in making the transition to ATV. The time periods suggested by the *Notice* appear to represent a carefully crafted balance between the need to move promptly towards ATV deployment and the broadcasters' need to develop and implement individual transition plans.⁴²

EIA and the Committee recognize and are sympathetic to the fact that some broadcasters operating in small markets may find it difficult to meet the same deployment schedule as broadcasters operating in larger markets. EIA and the Committee submit that the Commission should address the circumstances of individual broadcasters on a case-by-case basis.⁴³ We also believe that special consideration should be given to non-commercial broadcasters. In particular, the Commission's ATV rules should be flexible enough to ensure that these broadcasters retain their current non-commercial character. If non-commercial stations were required or permitted to use commercial mechanisms to fund their transition to ATV, the character of these non-commercial broadcasters would change and the public would suffer accordingly.

⁴² See *Notice* ¶ 63.

⁴³ Not all broadcasters that operate in small markets will have difficulty meeting the Commission's application and construction deadlines, particularly if they obtain HDTV programming from the networks and use NTSC for local programming.